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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-307**

13 **TRACY LEE POWELL**

14 **4362 Fairlands Drive**  
**Pleasanton, California 94588**

**ACCUSATION**

15 **Registered Nurse License No. 559653**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about September 8, 1999, the Board of Registered Nursing issued Registered  
24 Nursing License Number 559653 to Tracy Lee Powell ("Respondent"). The Registered Nursing  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on June 30, 2011, unless renewed.  
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1 such use impairs his or her ability to conduct with safety to the public the practice authorized by  
2 his or her license.

3 “(c) Be convicted of a criminal offense involving the prescription, consumption, or  
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
5 or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof.”

8 ...  
9  
10 8. Section 490 of the Code provides, in pertinent part, that a Board may suspend or  
11 revoke a license on the ground that the licensee has been convicted of a crime substantially  
12 related to the qualifications, functions, or duties of the business or profession for which the  
13 license was issued.

#### 14 COST RECOVERY

15 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licensee found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19 FACTUAL BACKGROUND

20 10. On December 7, 2007, the San Ramon Police Department received a report that  
21 Respondent was driving her vehicle in an erratic manner. Upon contact with the police,  
22 Respondent failed field sobriety testing used at the scene to determine if she was intoxicated. A  
23 preliminary alcohol screening test reported Respondent's blood alcohol to be 0.25%, with 0.08%  
24 being the legal limit for a misdemeanor charge of driving while intoxicated.

25 11. On or about June 11, 2008, in a criminal proceeding entitled *The People of the State*  
26 *of California v. Tracy Lee Powell*, Contra Costa Superior Court, Case Number 136581-6,  
27 Respondent was convicted by her plea of no contest to a violation of Vehicle Code section 23152,  
28 subdivision (b) [driving while having a 0.08% or higher blood alcohol], a misdemeanor.

12. In the same criminal proceeding, Respondent also entered into a plea of no contest to a violation of Vehicle Code sections 23538 (b)(2) and 23556(b)(4) [driving with a blood alcohol level of 0.20% or more], an enhancement to her plea of no contest to violating Vehicle Code section 23152, subdivision (b).

13. As part of her plea's of no contest in the aforementioned criminal action, Respondent was placed on 3 years court probation; ordered to serve 2 days in county jail; pay a fine of \$1771.00; and complete a 9 month First Offender Drinking Driver's Program.

### FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under Code section 2761(a) and 2762(b), in that she drove a vehicle with an illegal blood alcohol concentration that presented a risk to herself and to the public as set forth in paragraphs 10 through 13, above.

## SECOND CAUSE FOR DISCIPLINE

(Criminal Conviction)

15. Respondent is subject to disciplinary action under Code sections 2761(f), 2762(b), 2762(c), and/or 490 in that on or about June 11, 2008, in a criminal proceeding entitled *The People of the State of California v. Tracy Lee Powell*, Contra Costa Superior Court, Case Number 136581-6, Respondent was convicted by her plea of no contest to a violation of Vehicle Code sections 23152, subdivision (b), 23538(b)(2) and 23556(b)(4) as set forth in paragraphs 11 through 13, above.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse Number 559653, issued to Tracy Lee Powell.

2. Ordering Tracy Lee Powell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1           3.    Taking such other and further action as deemed necessary and proper.

2   DATED:   12/24/09

*Louise R. Bailey*  
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LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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